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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA
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7 THE BANK OF NEW YORK MELLON,)

8 Plaintiff,)

9 vs.)

10 ELKHORN COMMUNITY ASSOCIATION, et al.,)

11 Defendants.)
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Case No. 2:16-cv-02571-JCM-CWH

ORDER

13 Presently before the court is Plaintiff The Bank of New York Mellon's Response to Court's
14 Order Dated February 24, 2017, and Request for Extension of Time for Accomplished Service
15 (ECF Nos. 20, 21), filed on March 27, 2017. The motion is unopposed.

16 On February 24, 2017, the Clerk of Court entered a notice of intent to dismiss under Rule
17 4(m) of the Federal Rules of Civil Procedure, stating that no proof of service had been filed as to
18 Defendant 7321 Wandering Street Trust. (Rule 4(m) Notice (ECF No. 9).) The notice required
19 Plaintiff to file proof of service that this Defendant was served by the service deadline, which was
20 February 2, 2017.¹ (*Id.*) Plaintiff now moves for a retroactive extension of the service deadline,
21 arguing that good cause exists to extend the deadline because it contacted Defendant regarding
22 accepting service of process before the 90-day deadline expired. Plaintiff further argues that
23 Defendant accepted service of process, though not until after the deadline, and that service would
24 have been timely under the former version of Rule 4(m), which required service within 120 days.

25 Rule 4(m) of the Federal Rules of Civil Procedure establishes the time for service on
26 domestic defendants:
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¹ Plaintiff's complaint (ECF No. 1) was filed on November 4, 2016. The 90-day service deadline was February 2, 2017.

1 If a defendant is not served within 90 days after the complaint is filed, the court—
2 on motion or on its own after notice to the plaintiff—must dismiss the action
3 without prejudice against that defendant or order that service be made within a
specified time. But if the plaintiff shows good cause for the failure, the court must
extend the time for service for an appropriate period.

4 The court must extend the 90-day time limit of Rule 4(m) if the serving party shows good cause for
5 failure to serve within 90 days. *See Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir. 2009)
6 (citing version of Rule 4(m) with 120-day deadline). If the serving party does not show good
7 cause, the court has discretion to extend time for service, or to dismiss the complaint without
8 prejudice. *In re Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001). The court's discretion to extend time
9 for service, or to dismiss without prejudice for failure to timely serve, is broad. *Id.*

10 Courts must determine on a case-by-case basis whether the serving party has shown good
11 cause. *In re Sheehan*, 253 F.3d at 512. Generally, good cause is equated with diligence. *Townsel*
12 *v. Contra Costa Cnty., Cal.*, 820 F.2d 319, 320 (9th Cir. 1987). A showing of good cause requires
13 more than inadvertence or mistake of counsel. *Id.* “[A]t a minimum, good cause means excusable
14 neglect.” *In re Sheehan*, 253 F.3d at 512 (quotation omitted).

15 Plaintiff has not demonstrated good cause to extend time to serve Defendant 7321
16 Wandering Street Trust. Although Plaintiff argues good cause exists because it contacted this
17 Defendant regarding accepting service of process before the service deadline, Plaintiff has not been
18 diligent because it failed to move to extend time to serve Defendant before the 90-day deadline
19 expired. Regardless, under Rule 4, the court has discretion, even without good cause, to extend the
20 time for service. Given that Defendant ultimately accepted service of process, has appeared in this
21 case, and does not oppose this motion, the court in its discretion will grant the retroactive extension
22 and deem service timely.

23 IT IS THEREFORE ORDERED that Plaintiff The Bank of New York Mellon's Response
24 to Court's Order Dated February 24, 2017, and Request for Extension of Time for Accomplished
25 Service (ECF Nos. 20, 21) is GRANTED.

26 DATED: May 1, 2017

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C.W. Hoffman, Jr.
United States Magistrate Judge